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Vol. III

TRANSCRIPT OF RECORD

(Pages 985 to 1488)

Supreme Court of the United States

OCTOBER TERM, 1948

No. 228

NYE & NISSEN (A CORPORATION), AND ABRAHAM MONCHARSH, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 17, 1948.

CERTIORARI GRANTED OCTOBER 25, 1948.

No. 11308

United States

Circuit Court of Appeals

For the Ninth Circuit.

NYE & NISSEN, a Corporation, and ABRAHAM MONCHARSH,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Ten Volumes

VOLUME III

Pages 985 to 1488

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

Rotary Colorprint, 661 Howard Street, San Francisco

(Testimony of Henry Lester Pineda.)

Q. What was the test number of that butter?

A. I don't know.

Q. Did it have the test number on the container?

A. No, not that I recall.

Q. Didn't every container of butter show the churn number?

A. Yes, some, but not every one.

Q. Have you any recollection of any cartons of butter, sixty-eight-pound cartons of butter, that were in Nye & Nissen's plant on that day that did not have clearly indicated on the face of the carton the churn number?

A. Not that I remember. I didn't go around to every carton. There might have been some there.

Q. You could not state what the churn number of the butter was unless it was marked on the case?

A. They had to be inspected by the Government, by the Department of Agriculture, and Jack Smith would inspect it, too. And like when I unloaded freight cars they would have a list giving you the churn numbers and [822] then a list saying what kind of score that churn was. But that doesn't mean they had it on the box. It had the churn number but it wouldn't give the score of it.

Q. It wouldn't give what?

A. Not all had the score of butter on it. It would give you the list.

Q. What would have the churn number on?

A. This list.

Q. What?

A. The list that the freight man would put in-

(Testimony of Henry Lester Pineda.)

side the car if it was coming by freight car. As far as coming by truck, I wouldn't know. I just helped unload it.

Q. So that on the day before the butter cutting episode when you were given a list of the churn on these samples and were told to go in the freezer and take out all of those churns, how would you distinguish which container was part of those churns? What data did you have?

A. The churn number on the boxes.

Q. I just asked if every box was not marked with a churn number and you said no.

A. You said score number. That is why I say each box has a churn number but the score number is marked on the list that comes in with the boxes.

Q. Every box had a churn number?

A. A churn number, yes.

Q. Now, I ask you what the churn number was of the butter that was rejected.

A. I wouldn't know now.

Q. Was there more than one number?

A. I don't remember.

Q. Were there more than three numbers?

A. No.

Q. At all events, the butter that had been rejected, or, rather, [823] not accepted—no butter was rejected, was it? It just was not accepted for that order.

A. That is it.

Q. Your butter was placed in the butter room the night before you started butter cutting?

A. That is right.

(Testimony of Henry Lester Pineda.)

Q. And when you went down there and commenced to work, was that the first butter you cut?

A. Yes, it is.

Q. Had you completed the cutting of the butter before the sergeant arrived at eight o'clock in the morning?

A. Before Colonel Hand came?

Q. I didn't say Colonel Hand. I said the sergeant.

A. He came with Colonel Hand.

Q. Did Colonel Hand come the next morning?

A. Yes, the morning we cut the butter he did.

Q. Was he in the butter room?

A. He went into the butter room, yes.

Q. Did he weigh the butter?

A. No, but he stood there and watched us.

Q. Did he watch his sergeant weigh butter?

A. No.

Q. How long did he remain in the butter room?

A. I don't recall.

Q. Did he observe you weigh butter?

A. Yes, he did.

Q. Did you observe any of the girls weigh butter?

A. I don't know when Mary started cutting butter. He may have been around but I don't recall that time.

Q. Did he weigh any of the cases of butter after they had been weighed on the individual scales?

A. No. [824]

Q. He did not? A. Not that I remember.

(Testimony of Henry Lester Pineda.)

Q. How do you know?

A. I never saw him do it.

Q. There wasn't any scale in the butter room for him to do it, was there?

A. Yes, there was.

Q. How many scales are there in the butter room?

A. We had one big scale that weighed up to 250 pounds, but I don't believe we had that in the butter room that day, because sometimes we used to just shove it aside, because I used to use that for my breaking room. As I said before, we used part of this butter room to break eggs. We used part of this breaking room for butter, and we would push this scale aside once in a while and we would weigh some of this heavy butter.

Q. Did you weigh any of that butter that day?

A. I don't recall weighing myself. I don't recall weighing any.

Q. Do you know that part of the equipment of the plant right in the neighborhood of the butter room was a scale that would weigh a case of butter?

A. Yes.

Q. At eight o'clock in the morning Colonel Hand came, is that right?

A. Around eight o'clock.

Q. With an assistant? A. Yes.

Q. And an explanation was given to Colonel Hand by somebody of the activity that had been going on since seven o'clock in the morning, is that right? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Who was the one who talked to Colonel Hand? A. Mr. Goddard.

Q. And what did he say?

A. He told him we were cutting butter [825] for our own use.

Q. And what did Colonel Hand say?

A. I don't recall.

Q. All of that butter that had been cut up to that point of time was butter that Colonel Hand had not accepted as part of the Government order?

A. That is right.

Q. And the remaining part of the butter which he had accepted for the Government order was stacked up there out in the corridor, wasn't it?

A. That is right.

Q. What was done with the cases that the butter was contained in that had been described to Colonel Hand as butter cut for our own use?

A. That butter had been stripped the night before and those cases placed up next to Ruby's office, toward the righthand side.

Q. Those are the 60-pound cases, aren't they?

A. 68.

Q. I am talking about the one-pound cubes that had been cut from the butter that Colonel Hand had not accepted.

A. They were placed in 30-pound cartons.

Q. In 30-pound boxes? A. Yes.

Q. And when Colonel Hand came in where were those boxes?

(Testimony of Henry Lester Pineda.)

A. They were right at the exit there—that is it, right there, next to the roller.

Q. Can you see that, Mr. Pineda (indicating on blackboard)? A. Yes.

Q. In other words, someone takes the one-pound cube of butter from the machine somewhere between where it says "machine" and [826] where it says "roller," and someone puts those one-pound cubes into a 30-pound container, do they not?

A. Right at the end of the roller there.

Q. Right here (indicating)? A. Yes.

Q. And then that roller, I assume, is something that has a lot of cylinders. You give the box a shove and the way it goes, is that right?

A. That is right.

Q. When it stops it is down at the carton exist?

A. That is right.

Q. When Colonel Hand came in your were still cutting that butter, weren't you? A. Yes.

Q. Because you knew from your experience that no one would be permitted to cut Army butter or any part of it until an Army man was there, isn't that right?

A. Well, I don't know about that.

Q. Is there any question——

A. On this order here they wanted a Government man, an Army man, rather, there.

Q. Now, the order of unacceptable butter had already gone through that process and had been shoved down those rollers? A. Yes.

Q. And where was that butter stacked?

(Testimony of Henry Lester Pineda.)

A. It was stacked on flats of trays where it says "exit".

Q. They were all clearly within the eyesight of Colonel Hand as he came into the plant that morning, weren't they? A. Yes.

Q. And those cases that were out there were explained *to* Mr. Goddard as butter that he had cut for their own use?

A. That is right. [827]

Q. And after that you commenced the Government cutting? A. Yes.

Q. And Colonel Hand observed that, did he not?

A. Part of it.

Q. His assistant remained in that room a greater part of the time, did he not?

A. Not only in that room, but he had to go where it says, "Exhibit" there. He had to go from there all around that butter room—from the exit all the way over to——

Q. He only had to do that when it came time to stamp a case, is that right?

A. The cases come pretty fast. He would have to stamp some and some—he couldn't keep running up and down. He even stamped some cases ahead of time and placed them right next to the roller, there, some of these boxes or 30-pound cartons.

Q. He could stand right there and stamp every case, couldn't he?

A. He couldn't stand there because the girl is standing right there and the table would be only about this big (indicating).

(Testimony of Henry Lester Pineda.)

Q. He could stand right there between the exit and the girl?

A. He could do a lot of things, but that doesn't mean he did it.

Q. That is not where he stood?

A. No. Some he stamped there and some he went over—sometimes he talked to the girls or talked to whoever was around.

Q. He also was weighing about every twentieth cube of butter, [828] wasn't he? A. No.

Q. Who was the man from the Army——

A. I am the man who weighs every twentieth case.

Q. Who is the man from the Army whom you referred to on your cross-examination earlier as being the man who weighed about every twentieth cube of butter? Who was he?

A. I didn't say any Army man weighed every twentieth cube of butter.

Q. You weighed every tenth cube, is that right?

A. Tenth, twentieth—it depends on the order.

Q. Did the Army Inspector weigh any butter at all? A. Himself, no.

Q. So that in this particular Army inspection with Colonel Hand being the man who was there to start it off in the morning, the Army inspector never weighed a single cube of butter, is that right?

A. That is right.

Q. And Colonel Hand never weighed a single cube of butter?

A. Not to my knowledge, no.

(Testimony of Henry Lester Pineda.)

Q. But you, however, did weigh cubes of butter?

A. Yes.

Q. While you were engaged in your activity, either in taking the butter from the pre-cutting plant or handling the machine, or handling the weighing part, did the Army inspector weigh any butter in the containers, if you know?

A. No, not that I know of.

Q. The scale, however, was not in your presence, was it? [829]

A. Well, they had more than one scale. They have another scale back of Ruby's office.

Q. In other words, they had a lot of scales there?

A. To my knowledge they had two, two large ones.

Q. In other words, it is a known fact how much the carton weighs? A. Yes.

Q. And it is a known fact how many ounces those—— A. Wrappers?

Q. Wrappers weigh? A. Yes.

Q. So that in the butter business, in addition to a check of individual prints as they come off the line, a person can weigh those 30-pound cases and know whether the butter has been cut up to the requirements, isn't that correct?

A. That is right.

Q. Now, you do not know of your knowledge whether that was done in this instance, or not, do you? A. No, I do not.

Q. Now, how long did it take you to cut butter for the Army on that day?

(Testimony of Henry Lester Pineda.)

A. I don't quite remember. I don't believe it lasted the whole day.

Q. The whole day?

A. Not quite the whole day.

Q. About how many cases of butter did you cut an hour in that old machine?

A. Well, I never did go by how many cases we cut an hour, but I know once we took a count and counted a litfle over 20,000 pounds that we had done in eight hours.

Q. In eight hours? A. Yes.

Q. Was that with a crew similar to the one you had that day? [830]

A. No—I am not sure how many we had that day. That was with what we call a full crew.

Q. A full crew would be how many?

A. We were using quite a few girls there. It would be from about 7 girls—more or less 7 wrapping.

Q. Wrapping? A. Yes.

Q. Do you recall on this particular day how many girls there was? A. No, I do not.

Q. You know there were at least four, however?

A. Oh, God, yes, there was 4.

Q. The girls wrapped the prints in tissue paper and placed it in the box, isn't that right?

A. No; each girl wraps—takes two to four pounds off this belt. She places it in front of her, and then she has those wrappers that have been soaked in brine. She wraps it up. As soon as she

(Testimony of Henry Lester Pineda.)

has four she puts it on a belt and it goes to where it says "Roller" there.

Q. And then they have another girl there?

A. They have another girl that puts them in a box.

Q. In connection with the particular day when the order was completed, Mr. Pineda, where were all the cartons of butter?

A. Well, most of them—not all of them—but most of them were brought to the cooler.

Q. Did you bring them in the cooler?

A. No.

Q. Were they being brought into the cooler during the day? A. Yes. [831]

Q. Were they being marked?

A. Stamped—you mean stamped by the Army man?

Q. Yes. A. Yes. [831-a]

Q. In other words, Mr. Pineda, on this particular occasion the Army man would go out and stamp these cases as they were filled, isn't that right?

A. Some when they were filled and some before they were filled.

Q. You mean he would stamp them on the way down the roller?

A. No—some, yes, and then there would be one of the girls or whoever was out in the front there would make up these boxes and set them aside so the girl at the end of this roller would pick up this carton already made—it only takes a few seconds to make them—and he would go and stamp a few

(Testimony of Henry Lester Pineda.)

so he would have time to come over and see the rest of the operations, how they were going along.

Q. Maybe I didn't quite get that. Mr. Pineda, the Army men would stamp a few cases before they would put the butter in?

A. Yes, but they would be on the floor alongside of the bench there, alongside of the belt.

Q. Near the belt, where the belt comes down to the roller? A. That is it.

Q. That would permit the girls to fill those cases while he did something else?

A. Yes, and then when he would come back he would go outside where they have "Exit" and find out how many boxes were stamped and sort of catch up.

Q. The ordinary method was for him to accept the boxes as they came off the roller and stamp them?

A. The ordinary method, but that is the way they would do it. Later on they even had to [832] get two men to take this: one man to do the stamping and one man to watch us.

Q. Do you recall two men?

A. I don't recall two men.

Q. Usually they had two men?

A. Not usually, but later on.

Q. Later on that day?

A. No, sometimes they would have two men.

The Court: It is now time for adjournment.

Mr. Faulkner: Yes, your Honor.

The Court: Keep in mind the admonition of the

(Testimony of Henry Lester Pineda.)

Court and return at ten o'clock on Tuesday morning.

(An adjournment was thereupon taken until Tuesday, January 29, 1946, at 10:00 o'clock a.m.) [833]

Tuesday, January 29, 1946, 10:00 o'clock a.m.

The Clerk: United States of America vs. Nye & Nissen.

Mr. Faulkner: Ready.

The Court: Call the roll.

(The roll of the jury was called, all jurors being present.)

HENRY LESTER PINEDA,

recalled.

Cross-Examination (Resumed.)

Mr. Faulkner: Q. Mr. Pineda, when we concluded the hearing on Friday did you take the transcript of your direct testimony home to study?

A. No, I did not take it home, but I read it.

Q. When you were crossing Seventh Street at Mission after you left the witness stand what did you have in the envelope you were carrying?

A. I hadn't it on Friday, but the first day I took home.

Q. What?

A. Of the first day, it was all, I was reading the first day.

(Testimony of Henry Lester Pineda.)

Q. You took that home? A. Yes.

Q. Did you study it carefully?

A. No, I just read it over to see what I had said.

Q. On the occasion of the inspection of butter, I understood you to testify, Mr. Pineda, that during part of the occasion when that butter was being cut that you were engaged most of [834] the time in the actual regulation of the butter as it came out of that nozzle. A. Yes.

Q. Having in mind that this transaction of butter cutting occurred all on one day, how much of your time was devoted to running the nozzle out of which the butter came?

A. Most of the day.

Q. Most of the day. You testified in relation to short-weighing the butter that you were cutting two-pound squares of butter two ounces short.

A. Two one-pound squares.

Q. In other words, two one-pound cuts of butter, not that, but two pounds that you were cutting them two ounces short? A. Yes.

Q. And that would make 15 ounces to the pound, is that right? A. That's right.

Q. You did that all day long? A. Yes.

Q. How much time do you think that butter machine ran, cutting butter one ounce short to the pound?

A. How much time?

Q. Yes.

A. Well, all about 55 minutes out of the hour, I guess.

(Testimony of Henry Lester Pineda.)

Q. 55 minutes out of one hour?

A. From 50 to 55.

Q. Anywhere from 5/6 to 11/12 of the time was devoted to cutting butter short-weight, that's right, isn't it? A. About 5/6 of the time.

Q. And during practically all of that time there was in that room which you described as being a room from where you sit [835] to the chairs, about that square, there was an Army inspector in the room practically all of that time?

A. Not in the room; it is two rooms; it is divided so it makes one butter room.

Q. You described the procedure there on that blackboard where the nozzle was, where the rollers were for the cases to come out and the nozzle, and how the butter went down there after being weighed, and was wrapped, placed in boxes, and you drew a diagram of the room.

A. Yes, but it really isn't one room. It had a partition on the floor before taking some walls off; but it is really two rooms.

Q. If you look at the blackboard over there, the diagram you made of the butter room, the Army inspector was in that enclosure as delineated on that blackboard during the entire time?

A. Most of the time except when he went outside to stamp some of them and sometimes he stamped them inside.

Q. You also described how you cut that butter short? —— A. Yes.

Q. The method was, you first testified, that you

(Testimony of Henry Lester Pineda.)

stuck a couple of ounces of butter on the side of the scale where the weights were; isn't that correct?

A. What do you mean by a couple of ounces?

Q. You said you took some butter, a quantity of butter, and put the butter on the side of the scale where the weights were.

A. No. I said I put it next to the scale.

Q. What?

A. I said I put it next to the scale, around the scale. [836]

Q. On your direct examination you first testified that you put the butter on the same side where the weights were, did you not?

A. I did not mean to say it if I did.

Q. Later you testified you put the butter on the side of the scale where the butter was, isn't that right?

A. Where I stuck the butter?

Q. Yes. You said you placed it underneath the container for the butter.

A. One ounce, not a couple of ounces.

Q. A couple of ounces A. One ounce.

Q. You would put that underneath the scale where you put the butter?

A. At times I did that. There were different ways of weighing; at times I did that.

Q. Will you step down here, Mr. Pineda? Did you ever see that before? A. Yes.

Q. Do you recognize that as the butter scale that you used on Townsend Street?

A. Yes. I believe it is, something like it.

(Testimony of Henry Lester Pineda.)

Q. The matter of weighing butter was that there would be a two-pound weight—— A. Yes.

Q. On this side, and you would place the butter, the two-pound cut, the prints of butter on that side?

A. Yes.

Q. Of course, this includes——

A. The carton.

Q. Yes. But you would put the two-pound prints without the cartons on that side? A. Yes.

Q. On that scale, if it breaks the center where the arrow is between "Under" and "Over", it is the correct weight, isn't that [837] correct?

A. Yes.

Q. If it breaks under it is the incorrect weight; am I correct in that? A. Right.

Q. On this occasion at the butter wrapping when you weighed it—just a minute, we will keep the wrappers here. The difference there would be represented by—— A. By the wrappers.

Q. By the wrappers. In other words, if you were weighing the butter already wrapped the practice was to put the wrappers over by the scale?

A. Yes.

Q. Now, I would like you to show to the jury how you put an ounce of butter on that scale, underneath that scale, in order to confuse this inspector; those are one-ounce pieces (indicating).

(The witness indicates.)

Q. That is how you did it? A. Yes.

Q. So that you were running butter at how fast a minute? A. Very fast.

(Testimony of Henry Lester Pineda.)

Q. Very fast. You were——

Mr. Hippeli: Let's put the labels on, Mr. Faulkner.

Mr. Faulkner: All right.

Q. Assume that that is it. That is the way you did it? A. Yes.

Q. How fast would you do it, how many pounds would you weigh an hour?

A. As it came out of the machine here I would be cutting here, like that. [838]

Q. Like that (indicating)?

A. Yes, like this.

Q. The inspector who was in the room, I would like you to describe how you would take that off and regulate the nozzle.

A. The nozzle coming down here, as soon as I saw the inspector coming out of the room I turned it around and take this out. We have steam, it is always sort of hot in the room, steam is coming down, so I would be here and put it down here (indicating).

The Court: Just a minute. Read that answer.

(The answer was read.)

Mr. Pratt: May I suggest, Mr. Pineda, can't you speak more slowly?

The Witness: Yes. I mean this gets me.

Mr. Faulkner: Q. The inspector is in the room, or the vicinity of the room, and you saw him walking toward the scale? A. Yes.

Q. Then what would do you? You would take the butter—describe it.

(Testimony of Henry Lester Pineda.)

A. First I turned this to the left. I wouldn't have any butter here except maybe sometimes he came down here and sometiems he wasn't.

The Court: You are talking to counsel.

Mr. Faulkner: Suppose you go back to the stand.

The Court: Be seated.

Mr. Faulkner: Q. You would what? Do you want to use this?

A. It's all right now, thank you. [839]

Q. All right. Now, you have the butter back here and you saw the inspector coming toward the scale, is that right? Is that right?

A. Wait a minute. I mean I worked it all the time, it is just force of habit. I am trying to remember.

Q. On this particular day I am talking about.

A. We always did the same thing.

Q. On this particular day when the inspector, the Army inspector walked toward the scale——

A. Yes.

Q. You removed the butter that you had put back here and put it some place else by the time that he got to the scale. Now, I want to know what you did. You saw the inspector in this room the size that you indicated and about where Mr. Houck is, you saw him, he was walking toward you and you are weighing butter with some butter underneath the scale. I want you to describe what you did with that butter and what you did with the nozzle between the time that you saw him and the time he got up to the scale.

(Testimony of Henry Lester Pineda.)

A. Well, I would turn the nozzle to the left, put the butter on the scale, and the girls, when they are wrapping butter, they have a little piece like that, a few little pieces that they patch the butter with, they would always have a little piece. I used to make it a habit of having that around there. That is one way of weighing the thing. Another way——

Q. No. I am talking about what you did on that day.

A. Well, that day. I never do the same thing all the time. [840]

Q. Do I understand, Mr. Pineda, that you had the ability to turn the nozzle, the regulator of that nozzle forward in the period of time that the inspector came and bring that up so the butter would weigh exactly two pounds?

A. Yes. Not exactly, but more or less. It won't be exact even if you try to keep it there all day, you can't do it. If the inspector sees it is sometimes a little under or a little over they never complain.

Q. The Army inspector saw that it always was on the mark or over, doesn't he?

A. Not necessarily, no.

Q. Did you ever cut any butter when Colonel Hand permitted any butter to pass his weight inspection that did not cut on the mark or over?

A. Well, when the inspector——

Q. I am asking you——

A. I don't know what he saw. Yes. You are stating—I can't tell what they observed. I just

(Testimony of Henry Lester Pineda.)

weighed it for them. If they don't like it they throw it back.

Q. Have you ever seen Colonel Hand in the room when butter was being weighed?

A. I don't remember.

Q. You saw him on that morning?

A. I didn't say when I was weighing butter. He was there when we first started working. He placed his men where he wanted them.

Q. You were weighing butter while he was there?

A. Yes.

Q. You had been working on butter for an hour?

A. That doesn't mean he was watching me. He could have been talking to his men. [841]

Q. Isn't the primary purpose of the men in that room to see the churn of the butter is the churn selected by the inspector and see if weighed?

A. No, not necessarily.

Mr. Pratt: I object to that.

The Witness: I don't know what they are supposed to do.

Mr. Pratt: He is asking the witness to state what the duties are——

Mr. Faulkner: I will withdraw the question in that form although it has been answered. Do you move to strike the answer out?

Mr. Pratt: No. I didn't even hear the answer. I don't know what he said now.

Mr. Faulkner: All right.

Q. You have observed inspectors in the butter room?

(Testimony of Henry Lester Pineda.)

A. Yes.

Q. Army inspectors? A. Yes.

Q. Were they concerned with the weight of the butter as it came down the process? A. Yes.

Q. How did they determine whether they were getting the correct weight of butter?

A. By the——

Mr. Pratt: I object to that.

The Court: "How did they determine"——

Mr. Faulkner: Yes, how did they determine the butter weighed—Did they observe the weight?

A. They observed it.

Q. They observed this scale right here?

A. Yes.

Q. They would not pass the butter that did not break the scale, [842] would they?

Mr. Pratt: I object to that.

The Witness: I don't know about that.

Mr. Faulkner: Well, your Honor——

Mr. Pratt: Excuse me. He is asking this witness what the mental operations of the inspectors were.

Mr. Faulkner: I am not asking any such thing. I asked him if the Army inspectors, if it was not the fact the Army inspectors wouldn't pass butter unless the weight broke the scale. It is not a mental process.

The Court: He may answer.

The Witness: A. What do you mean by "breaking the scale"—like this? (Indicating).

Mr. Faulkner: Q. That the butter broke the scale.

(Testimony of Henry Lester Pineda.)

A. Suppose——

Q. Just a moment. Excuse me.

The Court: Just a moment.

The Witness: What do you mean?

Mr. Faulkner: He is not answering.

The Court: Just a moment.

The Witness: I am just trying to show him.

The Court: Just a moment.

The Witness: Like this.

Mr. Pratt: Wait a minute, Mr. Pineda; the Court is speaking.

The Witness: I am sorry. [843]

The Court: Read the questions and the answers.

(The record was read by the reporter.)

Mr. Faulkner: That butter breaks the scale right now, isn't that correct?

The Witness: I don't know what he is talking about. I could explain him my own way, breaking the scale. If this is two pounds, if the scale signifies two pounds exactly—what do you mean, that is breaking the two pounds.

Q. You have testified that you have been a butter man for nine years. A. Yes.

Q. In butter inspection work and butter running does that butter break the scale as you observe it there now?

A. I worked in the butter. I worked for Nye & Nissen. They didn't give me about breaking the scale, they said——

Mr. Faulkner: I asked him if the butter broke the scale.

(Testimony of Henry Lester Pineda.)

The Court: He asked you what do you mean b breaking the scale

Mr. Faulkner: Q. Do you know what that ex pression means?

A. No. That is what I am trying to find out.

Q. What expression do you use to show tha butter meets the one-pound or two-pound require ment, what expression do you use when you ar weighing butter?

A. I just say it is over.

Q. All right. Is that butter over?

A. Yes, that is over, the two pounds.

Q. You can go back to the stand, please.

A. Yes, but still [844] I haven't been able to sa anything I wanted to say. This is not justice.

The Court: Well, you will have to keep in mi that there are methods and rules that we have to o serve legally.

The Witness: So I have noticed.

The Court: Yes, and you are limited to that. you don't understand the question you can ask—

A. It seems that I have to answer what he wan me to answer.

The Court: Now—no, that is not——

The Witness: Well, the way they give you t questions, that's the way it seems.

The Court: Well, it may seem to you that wa but I am here to determine those matters. You bett leave those questions to me. [845]

Q. Now, Mr. Pineda, have you ever been in t butter room when Colonel Hand was inspecting a

(Testimony of Henry Lester Pineda.)

observing the weight of butter where he passed the weight of the butter and where the butter was not on the line or over?

A. I have been in the room——

Q. Yes or no, please?

A. No. He asked me about three questions, your Honor. I just answered one question. I just answered yes or no to three questions in one.

The Court: I do not want to interject myself in this matter, but it is a simple matter for you to answer the question.

The Witness: But in his way.

The Court: Never mind about that. He has a duty to perform to his clients.

The Witness: I know, your Honor, but he asks me like this: Did I ever see Colonel Hand inspecting the butter? I have seen him inspecting the butter but I don't remember him watching me weigh the butter.

The Court: You are limited under the question to answer yes or no and then if you want to make any explanation you may. Proceed.

Mr. Pratt: May I suggest to the witness that he rely upon Government counsel to protect him in connection with the questions rather than to volunteer explanations himself?

The Court: Proceed.

Mr. Faulkner: Q. Now, on the occasion that an Army inspector was in the room when you were cutting this eight to ten [946] thousand pound order for Army butter, where Colonel Hand was in there

(Testimony of Henry Lester Pineda.)

from the inception of the process, did that inspector, whoever he may have been, pass any butter as coming up to weight that did not balance the scale or register over?

A. I don't know.

Q. In the beginning of your operation that morning you had to cut 20 pounds of butter, according to your testimony, before you could regulate that nozzle so that it would cut the one-pound prints, isn't that right? A. Yes, that is right.

Q. But when you had this piece of butter stuck on the scale and observed an inspector in the room you could take that butter off and regulate that nozzle before he got up to the presence of the scale so that it would cut one ounce more per pound?

A. I could regulate it before he takes two steps.

Q. You can? A. Yes, I can.

Q. And will it cut down then exactly one pound?

A. Not exactly, but more or less. It is up to him whether he accepted it or not.

Q. On this occasion when you made this turn, Mr. Pineda, if it registered less would that Army inspector working under Colonel Hand—if it registered under would he have passed that butter?

A. I don't know whether he did or not because I don't remember whether it weighed less or not.

Q. On any occasion that day do you remember whether in this action of your's of taking a piece of butter off of here and [847] turning that nozzle whether on any occasion it still registered under?

A. I don't remember.

(Testimony of Henry Lester Finneda.)

Q. Do you remember after you went through that operation if on any occasion it registered over?

A. Yes, sir, that was my main idea. I gave it a very strong turn so I tried to make it weigh over. I knew if the inspector saw it over he wouldn't say anything, but if he saw it less he might complain and go down to the belt and weigh some more. So my purpose was to give it a good turn so it would weigh over, two or three cuts, and then if it was over I would start regulating it to make it balance on the nose.

Q. You mean do that while the inspector was watching? A. Yes.

Q. And then you would regulate it back to the weight? A. Yes sir.

Q. You would do that while he was watching?

A. Yes sir.

Q. If you did that in the presence of an Army inspector is it not a fact that he would require every print of butter that had passed through that machine weighed right then and there?

A. No, because if it is over it is to their advantage.

Q. It is to whose advantage?

A. The Army's.

Q. Well, that is right. In other words, then, you would regulate that so it would be over, is that correct?

A. Yes, I would give it a turn—I wouldn't know how much it would be over because you can't tell, but I knew how much I had turned it to my right,

(Testimony of Henry Lester Pineda.)

so I just tried to turn it that much more to my left to try to make it over. [848]

Q. How many times did you do that on the day in question when you had an order for eight or ten thousand pounds of butter?

A. You will have to ask the inspector.

Mr. Pratt: I object to that. He did not say he had an order for eight or ten thousand pounds of butter. He said he did not know what the extent of the order was.

Mr. Faulkner: We had this discussion before, your Honor, and I am going to read the record because your Honor said, "Let the record speak for itself".

The Court: Is there anything in the record that this witness said he knew about any order?

Mr. Faulkner: Yes, your Honor. In other words, your Honor will recall that we had this discussion before.

The Court: That is Counsel's objection, as I understood his objection, in relation to the order.

Mr. Faulkner: Yes.

The Court: Q. Did you know about any order for butter?

A. My orders were to cut a certain amount.

Q. Did you know anything about the order?

A. No.

The Court: Proceed.

The Witness: The order given to me is an order that doesn't mean it is an order coming in. It might have been for 5,000, it might have been for one

(Testimony of Henry Lester Pineda.)

I don't know. My orders were to cut that butter, and I figured I cut about eight or ten thousand pounds.

Mr. Faulkner: This is the very first. Your Honor will recall when Mr. Pratt made the same objection before he stated to your Honor it was not proper to refer to orders of butter because the witness had never referred in his testimony to orders for butter.

Mr. Hippeli: What page?

Mr. Faulkner: 755.

"Mr. Faulkner: Q. Mr. Pineda, this action that you just accounted about the cutting of butter in that butter room was in what year?

"A. 1942.

"Q. And what was the order for? What was the order that you were cutting for? What did it call for?

"A. It called for one pound prints of butter.

"Q. What kind of butter?

"A. What do you mean what kind of butter? What score butter?

"Q. Yes.

"A. I don't remember the score.

"Q. Was it Grade A Butter?

"A. They don't run it Grade A.

"Q. Grade B butter?

"A. They go 90 score, 92 score, 93 score.

"Q. What is your best recollection of the type of butter that it was? "A. I don't recall." [850]

Then comes a discussion of the scoring of butter.

"Q. Mr. Pineda, there was no question that this was in the latter part of February, 1942?

(Testimony of Henry Lester Pineda.)

"A. Yes.

"Q. And the order was for 8,000 pounds of butter?"

And your Honor will recall I called your Honor's attention to the fact that the witness stuttered and said 800 to a thousand, and here it is:

"I said from about 8—800 to a thousand pounds.

"Q. From 800 to a thousand pounds? Now, which was it?

"A. No, I meant—let's see now—the only way I can judge it——

"Q. I just want you to tell me the number of pounds of butter involved in the answer.

"A. I will say from about eight thousand to ten thousand pounds is what I meant to say.

"Q. And you still mean to say that?

"A. Yes.

"Q. So the order was from eight thousand to ten thousand pounds of butter? A. Yes."

Mr. Pratt: If the Court please——

Mr. Faulkner: If that does not justify examination on how he knows what the order was, after he had testified——

The Court: What order do you mean when you say eight to [851] ten thousand pounds?

The Witness: The orders I am given are to cut so much. I can't see the orders. Like no man that works down at the plant sees the orders that come down from the office. They are given to a man higher than he. So I can't tell whether the Army order called for twenty thousand. We cut so much

(Testimony of Henry Lester Pineda.)

for them and then they take so much at a time out and a certain amount is left. The inspector comes down and inspects some more butter. We keep a surplus so we keep supplying them as they come. I couldn't tell you if the order was fifty thousand pounds. All I know is how much we cut that day.

Mr. Faulkner: I object to that volunteering.

The Court: Let us proceed with question and answer.

Mr. Pratt: Following I think what Mr. Faulkner has read——

Mr. Faulkner: What page?

Mr. Pratt: Mr. Hippeli has handed me page 759.

Mr. Faulkner: I was reading from 755.

Mr. Pratt: Here on 759:

"Q. Who was the butter to go to?

"A. I don't know.

"Q. Did you ever see the purchase order for the butter? A. No.

"Q. Now, some time in connection with that butter the Colonel came in there, is that right?

"A. Yes." [852]

It seems perfectly clear he was not talking about an order that Nye & Nissen had. He was talking about what he was directed to cut, and that was the basis of my objection.

Mr. Faulkner: Your Honor, that is the difficulty with this examination. The witness says he was cutting an eight or ten-thousand pound order of butter, and we leave it up in the air. He means one thing, and then we show by a simple question

(Testimony of Henry Lester Pineda.)

that he never saw the purchase order, then we find he meant something else.

The Court: The Jury heard the testimony.

Mr. Faulkner: That is right, so when he uses the term "order" it is for the Jury to determine.

The Court: Yes.

Mr. Faulkner: But my questions on the basis that he testified to an order were correct. Now, may I have the question?

(The last question was read.)

Mr. Faulkner: They made an objection, your Honor, that there was never any testimony about an order for eight or ten thousand pounds.

The Court: Reframe the question.

Mr. Faulkner: Will you read the question previous to that?

(Record read.)

Mr. Faulkner: Q. Now, on the day in question when you were cutting either under an order or under a direction to you or under an Army order, whatever it may have been, eight or ten [853] thousand pounds of butter on that day, how many times did you regulate that nozzle in order to regulate the weight of the butter coming out of it while the inspector was going from the place where you first observed him up to the scale? How many times did you do that?

A. I don't know how many times, but every time he came over to watch me I would do it. Sometimes he would come often, sometimes he wouldn't.

(Testimony of Henry Lester Pineda.)

Q. Would he come over ten times that day to watch the weighing?

A. Well, about eight, ten—I don't know.

Q. And how long would he stay?

A. He would stay about two or three minutes, five minutes—I don't remember. It all depends. Sometimes he would be talking to one of the fellows and he would stay there. Other times he would be talking to somebody else.

Q. Do you remember distinctly anything that happened in that butter room on the day in question?

A. I couldn't tell you minutes and seconds. I don't think you could tell me what you did yourself then. I could tell you what I did all day long, but minutes and seconds and pounds I couldn't tell you.

Q. Can't you remember anything that definitely happened in that butter room on that day when you were cutting eight or ten thousand pounds of butter?

A. What I just told you; that is what I remember.

Q. What?

A. About how I regulated the butter and how I cut the butter. [854]

Q. In the whole day how long did the inspector observe that scale while you were cutting butter?

Mr. Piatt: I object to that, if your Honor please. He has said he does not remember. He

(Testimony of Henry Lester Pineda.)

remembers a course of procedure that occurred many times, but what happened on that particular day he does not recall.

Mr. Faulkner: He recalled it all on direct examination, your Honor.

The Court: Read the question.

(Question read.)

The Court: You may answer.

The Witness: How long did he watch me as I was cutting butter—I mean weighing it?

Mr. Faulkner: May I have the reporter read the question to the witness?

The Court: Q. Are you prepared to say how many times the inspector observed you during that day? A. How could I tell, your Honor?

The Court: That is all.

The Witness: That is what I am trying to tell him, but he doesn't like that answer.

The Court: No matter what he likes, we are not concerned with that. We will have to proceed properly here. Proceed.

Mr. Faulkner: Q. Can you tell us how much time, apart from the number of times, how much time the inspector devoted to [855] observing the weights registered on that scale?

A. Every time he came over to watch the scale he spent, say, from two minutes to about four minutes.

Q. Was a half of his time in that operation of cutting that butter devoted to watching the scale?

(Testimony of Leroy Lester Lynda.)

A. No.

Q. Was a third of his time?

A. No. I would say he spent about over an hour. He would come over and take a look at me and see what I was doing—well, maybe 55 minutes of the time he would be away, and five minutes out of the hour he would be watching me. That doesn't mean he stays five minutes. He would come over and watch me two minutes, go away, come back and watch another three.

Q. He would go away from the room, would he not?

A. Yes, but when he goes into the other room we have these big cubes of butter there and so he can't really see me, unless he is trying to dodge me, except when the men cut with the pre-cut machine. The pre-cut machine sort of travels forward and then you can see, but when that machine goes back—and the butter cubes are that high (indicating)—he would have a hard time seeing me because I'm not very tall.

Q. The butter is that high?

A. The cube of butter is about that high. It is on a table. It is about my head. So he would have a hard time watching me.

Q. One-pound cubes like these (indicating)?

A. No, we are talking about the 68-pound cubes.

Q. They are on the other side, aren't they, by the nozzle?

A. Yes, but the machine, the pre-cut shoves it all the way back to about a half a foot away from

(Testimony of Henry Lester Pineda.)

the table, the belt. That pre-cut machine travels forward and backwards.

Q. Can you see that from there (referring to blackboard)? A. Yes.

Q. Where it says "Pre-cut," that is where the cubes of butter come in, where it says "P-3," isn't that right? A. Yes.

Q. Those 68-pound cubes of butter were cut into smaller cubes and went into this machine?

A. That is right.

Q. And the machine is where you have written "Machine worm," is that right? A. Yes.

Q. And the place where the inspector was marking the cases was somewhere between the words "Carton Exit" and the word "Belt," is that right?

A. That is right.

Q. Where is the partition?

A. Can I show it?

Q. Show me where the partition is?

A. There is no partition, but right here there used to be——

Q. Excuse me, I would like you to mark on the board the partition.

A. Your Honor, that is only this high from the floor, but that is what hides me——

Mr. Faulkner: If I can't examine this witness—he is given the privilege of paying no attention to the questions, your Honor—I asked him to mark where the partition is. That is all I want him to do. He keeps going on talking. [857]

The Court: There is no necessity of any con-

(Testimony of Henry Lester Pinola.)

troversy between Counsel and the witness. Proceed by question and answer.

Mr. Faulkner: Q. Will you please draw on that blackboard where the partition is you mentioned?

A. What partition are you talking about? I am just talking about the butter being in the way. I'm not talking about the partition.

Mr. Faulkner: Your Honor heard this witness say there was a partition in this room.

The Court: Proceed.

Mr. Faulkner: Q. Was there a partition in this room?

A. There was a partition here, but that isn't what hid me from the inspector.

Q. Where?

A. Just about here. It wasn't very thick.

Q. Draw it as nearly as you can.

A. Right here (indicating).

Q. How high was it?

A. It ran all the way to the top.

Q. P-4; that is where the partition is, is that right? A. Yes.

Q. About how wide is it?

A. I would say 'bout a foot.

Q. And how long is it? How far across the floor does it go?

A. I just told you it is about a foot wide and goes all the way to the top.

Q. Is that the partition you referred to a little while ago?

A. The partition I referred to a little while

(Testimony of Henry Lester Pineda.)

ago was this same partition. It came here and here, but was torn down. If you [858] will ask the recorder——

Q. Will you draw any other partition that was in the butter room on the day you were cutting eight to ten thousand pounds of butter?

A. There wasn't any other partitions.

Q. Will you show me where your 68-pound cubes of butter were?

A. The 68-pound cubes of butter were placed here, but the machine goes forward——

Q. Wait a minute. P-5—is that where you just marked? A. Yes.

Q. That is where the 68-pound cubes were?

A. Yes. The machine goes forward and cuts the butter, and then it is brought all the way back to make room to put more butter in its place here. When it goes all the way back it goes up to the belt here. Here is where I am cutting butter. It comes all the way back, just about where the girls are cutting butter——

Q. Where is the scale?

A. The scale is at the end of the table here, right here (indicating).

Q. P-6—that is the scale. Now, where are those stacks of butter that you described on the witness stand?

A. When this thing goes all the way——

The Court: Just a moment. Allow the witness to answer.

Mr. Faulkner: He doesn't answer, your Honor.

(Testimony of Henry Lester Pineda.)

The Court: That will be for me to determine.

Mr. Faulkner: I respectfully submit the witness is not answering.

The Court: It is not for you to determine whether he is [859] answering or not. He has a right to answer for the purpose of the record.

Mr. Faulkner: I move to strike out what he said as not responsive to the question.

The Court: The record will stand.

Mr. Faulkner: Exception.

Q. Now, what does that represent?

A. That is the butter that is ready to be pre-cut and pushed back so I can get it from this machine.

Q. I will ask you again where was the place where this stack of butter was that you just referred to on the witness stand that high?

A. Right here (indicating).

Q. Right where the word "Butter" is?

A. Yes.

Q. Where does the inspector do his work?

A. He does his work right around here, right here, and he walks around this way.

Q. Where the inspector works is P-7, P-8 and P-9, is that right? A. Yes.

Q. Now, when you took a piece of butter and stuck it under this scale it would remain there for about 55 minutes, is that right?

A. Not every time.

Q. How would you determine weight of this butter that you had put on the scale in order to

(Testimony of Henry Lester Pineda.)

balance these weights to cut the butter two ounces short?

A. I will explain it. When I first came in in the morning, and I placed the butter there, I would make it that one ounce—two ounces over, one ounce by the [860] scale and one ounce by the butter I placed on the scale, and then I would put—take that one ounce of butter I had on the scale, take it off, and when I put the two pounds on I would see how fast the break would go, for me to more or less figure out how much it weighed. It would be two pounds under. Then I would watch the scale. When I put the two pounds on there I would watch how fast it would go down. That is one way I would figure it out, too.

Mr. Faulkner: I ask that that all go out as not responsive to the question. I asked him how he determined the weight of a one-ounce piece of butter that he put on the scale.

The Witness: I weighed it.

The Court: Let the question and answer stand.

Mr. Faulkner: Exception. Now I will repeat the question.

Q. Will you please tell me how you determined the weight of the piece of butter that you stuck under the scale?

A. I showed you this morning. I weighed it. I weighed it on the scale, one ounce.

Q. Is that how you did it? A. Yes.

Q. Did you use the same piece of butter all day long?

(Testimony of Henry Lester Pineda.)

A. No, I had about six or seven of those pieces around.

Q. The inspector then who was in the room and in the vicinity that you have mentioned, after he had come up to observe the scale, you would take the piece of butter off, you would then adjust the scale so it would cut two pounds of butter in two [861] prints, and then when he would leave you would put another piece of butter on; would you weigh it? A. No.

Q. You would just take a piece of butter there and put it on, is that right?

Mr. Pratt: There are too many questions all in one and I object to it for that reason.

The Witness: That is what I tried to say.

Mr. Faulkner: The last question was, "Is that right?"

Q. You would just take a piece of butter and put it on, is that correct?

A. A piece of butter that had been weighed before.

Q. You would weigh it before?

A. I just said I had six or seven pieces that had already been weighed.

Q. Is that what you did in the morning? You had six or seven pieces out there already that day?

A. I had them next to where that girl—there is a girl working maybe a foot or a foot and a half away from me, so they couldn't tell whose butter it was, whether it was mine or her patch butter. The girls, as I said before, used butter to patch.

(Testimony of Henry Lester Pineda.)

Q. When was this occasion when Colonel Hand was in there and you were cutting this eight or ten thousand pounds of butter? A. In February.

Q. Of what year? A. 1942.

Q. Isn't it a fact that that army order in February of 1942 was cut in that butter room and you neither weighed butter nor controlled the nozzle, but the only work that you performed was [862] to take the 68-pound cubes of butter and cut them into the sizes to go to that machine?

A. No, that is not true.

Q. Isn't it a fact that on that occasion when Colonel Hand came into that room to fill that particular order that was the only job you did all day long? A. No, that is not true.

Q. When you started cutting butter in that plant on that day, the plant would shut down and everyone would go out for a recess, isn't that right?

A. Yes.

Q. And then when the plant would run again everyone would come back, is that right?

A. That is right.

Q. And the inspector would go back and forth with the crew, is that correct?

A. Well, I don't know whether he did or not.

Q. He did not remain in the butter room?

A. He might have stayed there talking to one of the fellows.

Q. Didn't everyone go out at lunch?

A. They don't have to go out.

Q. Did everyone go out to lunch that day?

(Testimony of Henry Lester Pineda.)

A. I don't know.

Q. You do not know. Do you remember going out? Do you remember going out that day?

A. No, I don't remember whether I left, or not. It all depends. If you are behind in your work you stay an extra ten or fifteen minutes and try to catch up, and if you are just even with the girls, you go and take your recess with them.

Q. You testified, Mr. Pineda, to an occasion when you went down to the Merchants Ice & Cold Storage Company. Do you remember [863] that?

A. Yes.

Q. And you were driven down there by Mr. Jack Smith, is that correct? A. Yes.

Q. Who else was in the automobile with you?

A. Mr. Goddard.

Q. And when you got down to the Merchants Ice & Cold Storage Company, who was there?

A. Some Army men, Army inspectors, Mr. Berman, and Mr. Joe—I don't recall his last name—Joe Barfell, Barfield——

Q. Have you a distinct recollection of Mr. Berman being present? A. Yes.

Q. What did Mr. Berman do from the time you first saw him down in that plant until your operation, whatever it was, was completed?

A. He didn't stay—he didn't stay very long. I think he was waiting for Mr. Goddard and I to get there so he could leave.

Q. How long did he remain—did he remain

(Testimony of Henry Lester Pineda.)

when you did anything in the presence of Mr. Jack Smith in connection with the eggs?

A. No, Mr. Jack Smith stayed outside the cooler. We had to go into the cooler. There was Mr. Goddard in the cooler, myself, Mr. Nix, and Joe.

Q. I asked you if Mr. Berman remained——

A. No.

Q. ——down there at any time when you did anything with respect to those eggs in the presence of Jack Smith.

A. I didn't say I did anything in the presence of Jack Smith, anything to the eggs.

Q. Was Mr. Berman in there when you were in the Merchants Ice [864] & Cold Storage plant handling those cases of eggs? A. No.

Q. Did you see him outside of the plant?

A. He was there when I got there.

Q. Did you see him inside of the plant at any time? A. No.

Q. Pardon me? A. No.

Q. Who were the Army inspectors down there?

A. I don't know.

Q. Were they officers or enlisted men?

A. Officers.

Q. How many were there?

A. I don't recall. I believe at least two. I know there was one main inspector there who kept really —had charge of the whole works there.

Q. How many cases of eggs were in the Merchants Ice & Cold Storage plant which you handled on that day? A. I don't recall.

(Testimony of Henry Lester Pineda.)

Q. Have you any idea, at all?

A. No, I have not.

Q. Do you recall what was done with the cases of eggs in your presence in that plant on that day?

A. Yes.

Q. Describe what was done by the Army inspectors to the cases of eggs?

A. Wait a second. I said what was done, and I didn't say anything about the Army inspectors.

Q. What was done by them in your presence which you observed?

A. I don't know, because they didn't do any inspecting. They were outside the cooler and I was working in the cooler with Mr. Goddard and Mr. Nix.

Q. When inside the cooler was there a large quantity of eggs in there?

A. Yes, there was. [865]

Q. Stacked how high?

A. I don't know how high, but it took—one man had to get up on top of this pile to give it to us.

Q. And the eggs were all moved from the position in which they were when you came in during that day, isn't that correct? A. Yes.

Q. And you did part of that handling, did you not? A. Yes.

Q. Now, as the eggs were handed down from the pile did the Army inspectors do anything to those cases of eggs in your presence? A. No.

Q. Were the eggs taken out of the cooler?

A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Whom by?

A. Well, I think it was Mr. Nix or Mr. Goddard.

Q. Visualize what you saw Mr. Nix do. Tell me what you saw Mr. Nix do with the case of eggs that afternoon.

A. There were about three of us most of the time in the cooler, and we were making dumps of eggs we could take them outside for the inspector, and that is all I did, was stay in.

Q. Were they flat?

A. No, I believe they were dumped. I don't recall. All I did was put them on the floor. Someone else made the dumps and took them out.

Q. Who was the man on top of the cases of eggs?

A. Mr. Goddard most of the time.

Q. He was on top of this high stack of eggs?

A. Yes, on top of the stack.

Q. Did he hand them down to you, or to Mr. Nix?

A. Probably handed them down to two of us. He handed them [866] down to us.

Q. What did you do with the cases of eggs?

A. I put them in a pile there.

Q. Pardon me? A. I put it in a pile.

Q. Would it be on a pile so they could be pulled out to the inspectors outside of the cooler?

A. Yes.

Q. Is that right? How long did you work doing that?

(Testimony of Henry Lester Pineda.)

A. I would say about four or five hours—about four hours—around the four-hour mark.

Q. When you had finished you had handled every case of those eggs, hadn't you?

A. Not every case, no.

Q. Wasn't it all broken down, Mr. Pineda?

A. That was the main idea of our going down there, to handle as few as we possibly could.

Q. Wasn't every case of eggs in that cooler or the place where they were stored handled by the men from Nye & Nissen and by the Army men?

A. I can't say that.

Q. Wasn't every case of eggs in the place moved from the position in which it was stacked to another position on that afternoon?

A. I can't say that, either, because the work was already started before I got there. I wouldn't know how it was originally placed.

The Court: The jurors will take a recess.

(Recess.) [867]

The Court: You may proceed.

Mr. Faulkner: Q. This occasion when you were at the Merchants Ice & Cold Storage Company, that is the only occasion that you ever drove down there with Mr. Jack Smith, is it not?

A. Yes, I believe it is.

Q. Now, Mr. Pineda, is it not a fact that on that occasion that what happened was this, that you and Mr. Goddard handled some cases that were already in the Merchants Ice & Cold Storage Com-